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NEW DELHI, SATURDAY, SEPTEMBER 7, 1991/BHADRA 16, 1913

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में  
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a  
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)  
PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों को छोड़कर) क्षेत्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं  
Orders and Notifications issued by Central Authorities (other than Administrations of Union  
Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 26 अगस्त, 1991

आ. अ. 88:—निर्वाचन आयोग 1990 की निर्वाचन अर्जी सं. 3 में  
गोवाहाटी उच्च न्यायालय (अपतला पीठ) के तारख 24-3-1991 वाले  
निर्णय को लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43)  
का धारा 106 के अधुसर्ण में इसके द्वारा प्रकाशित किया है।

[निर्णय अंग्रेजी में छापा है]

आदेशने,

[सं. 82/विपुल-लो. म./3/90]

वी. एन. चावला, प्रवर न्याय

ELECTION COMMISSION OF INDIA  
New Delhi, the 26th August, 1991

C.N. 88.—In pursuance of section 106 of the Representa-  
tion of the People Act, 1951 (43 of 1951), the Election  
Commission hereby publishes the judgement dated 24-3-1991  
of the Gauhati High Court (Agartala Bench) in Election  
Petition No. 3 of 1990.

IN THE GAUHATI HIGH COURT  
(THE HIGH COURT OF ASSAM : NAGALAND :  
MEGHALAYA : MANIPUR : TRIPURA : MIZORAM  
AND ARUNACHAL PRADESH)

BENCH AT AGARTALA

CIVIL MISC. CASE NO. 1 OF 1991  
(IN ELECTION PETITION NO. 3 OF 1990)

Sri Maharaja Manikya Kirit Bikram Kishore Deb Barma  
Petitioner/Respondent

Versus

Sri Bajuban Reang ... Respondent/Petitioner  
PRESENT :

THE HON'BLE MR. JUSTICE Y. I. SINGH

For the petitioner.—Mr. J. P. Bhattacharjee, Mr. S.  
Barman Roy, Mr. A. M. Lodh & Mr. S. Dutta,  
Advocates.

For the respondent.—Mr. B. Das, Mr. H. B. Saha, Mr.  
J. P. Dutta & Mr. A. Bhattacharjee, Advocates.

Dates of hearing.—February 11, 13, 14, 15, 18 and 19,  
1991.

Date of Judgment 27-3-91.

## JUDGMENT

In the last General Election to Parliament from the 2-Tripura East (ST) Parliamentary Constituency, five candidates had offered themselves. The answering respondent Maharaja Manika Kirit Bikram Kishore Deb Barma Bahadur, a candidate nominated by Indian National Congress, herein-after referred to as 'Congress (1)' was returned. The petitioner, a candidate nominated by the Communist Party of India (Marxist) in short 'CPI (M)' has filed an election petition challenging the election of the answering respondent on the ground that the answering respondent, his election agents and his workers with his consent or at his instance had committed corrupt practices. The returned candidate, that is, the respondent No. 1 filed an application under Order VI Rule XVI read with Order VII Rule XI of the Code of Civil Procedure, in short, 'the Code' for striking out the clearings in paragraph-7 to 18 of the election petition and also for rejection of the election petition.

2. Shri J. P. Bhattacharjee, learned counsel for the petitioner has urged that the pleadings in the said paragraphs are unnecessary, scandalous, frivolous, vexatious, vague and they tend to prejudice, embarrass and delay the fair trial of the case and also otherwise abuse of the process of this Court inasmuch as the pleadings do not disclose material facts and particulars within the meaning of Sections 83, 100, and 123 of the Representation of People Act, 1951, in short, 'the Act' and that after striking out the said pleadings the election petition does not disclose any cause of action and, therefore, the petition is liable to be rejected. Shri U. B. Saha, the learned counsel for the petitioner, on the other hand, submits that the pleadings in the said paragraph 7 to 18 disclose all the material facts and particulars within the meaning of the said sections and, therefore, the same are not liable to be deleted.

3. There is no dispute that the Court may at any stage of the proceeding pass an order for striking out any matter in any pleading in an election petition which is unnecessary, scandalous, frivolous or vexatious, or which may tend to prejudice, embarrass or delay the fair trial of the suit or which is otherwise an abuse of the process of the Court under Order VII Rule 16 'the Code'. Likewise, there is no dispute that an election petition shall be rejected if the petition does not disclose any cause of action after striking out such pleadings. In the case of Dharmakar Madan Lal Agarwal v. Sri Rajiv Gandhi (AIR 1987 SC, 1577) it was tersely held that if the Court on examination of the election petition finds that if the Court on examination of the election petition finds that it does not disclose any cause of action, it would be justified in striking out the pleadings at any stage of the proceedings even before the filing of the written statement by the respondent and that if after striking out the pleadings the Court finds that no triable issues remain to be considered, it has the power to reject the election petition under Order VII Rule 11. Hence, I take it that the Court may order for striking out the pleadings at paragraph Nos. 7 to 18 of the election petition even before the filing of the written statement if the same do not disclose any cause of action and that if after striking out these pleadings the Court finds that no triable issues remain to be considered the election petition is to be rejected. Point is, whether the pleadings at the above mentioned paragraphs disclose any cause of action. Before proceeding to the consideration of the points raised by the learned counsel of both the parties, during the course of their arguments, I consider it necessary to set out the relevant provisions of law bearing on those points.

4. Now, sections 80 and 81 of 'the Act' relate to the presentation of the election petition. Section 82 of the Act deals with the parties in the petition. I am not concerned with these sections and therefore I have skipped over the same. Section 83 of the Act covers the contents of the election petition. It provides as follows :—

“(1) An election petition—

- (a) shall contain a concise statement of the material facts on which the petitioner relies ;
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleged, including as full a statement as possible of the names of the parties

alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings;

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

- (2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

5. Section 86 of the Act deals with the trial of the election petition. It provides that the High Court shall dismiss an election petition which does not comply with the provisions of section 81, or section 82 or section 117. Section 87 covers the procedure before the High Court. Section 100 relates to the grounds for declaring election to be void. Sub-clause (1)(b) of this section provides that subject to the provisions of sub-section (2) if the High Court is of opinion that any corrupt practice has been committed by a returned candidate or his election Agent or by any other person with the consent of a returned candidate or his election agent, the High Court shall declare the election of the returned candidate to be void Sub-clause (1)(d)(ii) of the same section further provides that subject to the provisions of sub-section (2) if the High Court is of the opinion that the result of the election in so far as it concerns a returned candidate, has been materially affected by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent the High Court shall declare the election of the returned candidate to be void.

6. Section 101 of the Act relates to the ground for which a candidate may be declared to have been elected. Under this section the High Court shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate as the case may be to have been duly elected.

7. Section 123 of the Act deals with the corrupt practices. It provides as follows :

“The following shall be deemed to be corrupt practices for the purposes of this Act :—

- (1) xxx xxx xxx
- (2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person (with the consent of the candidate or his election agent) with the free exercise of any electoral right :

Provided that —

- (a) without prejudice to the generally of the provisions of this clause any such person as is referred to therein who—
- (i) threatens any candidate or any elector, or any person in whom a candidate of an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community, or
- (ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine pleasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

- (7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or by any other person (with the consent of a candidate or his elec-

tion agent), any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely :—

- (a) gazetted officers;
- (b) stipendiary judges and magistrates;
- (c) members of the armed forces of the Union;
- (d) members of the police forces;
- (e) excise officers;
- (f) revenue officers other than village revenue officers known as *lambardars*, *malguzars*, *patels*, *deshmukhs* or by any other name whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and

- (g) such other class of persons in the service of the Government as may be prescribed;

Provided that where any person, in the service of the Government and belong to any of the classes aforesaid, in the discharge or unreported discharge of his official duty makes any arrangements or provides any facilities or does any other act or thing, for to, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangement facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election.

xx            xx            xx            xx

- (8) Booth capturing by a candidate or his agent or other person.

xx            xx            xx            xx

#### 8. Chapter III—covers electoral offences.

Section 127 deals with the disturbances at election meetings. It states as follows :—

- (1) Any person who at a public meeting to which this section applies acts or incites others to act, in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together, shall be punishable with imprisonment for a term which may be extended to three months or with fine which may extend to one thousand rupees, or with both.
- (2) This section applies to any public meeting of a political character held in any constituency between the date of the issue of a notification under this Act calling upon the constituency to elect a member or members and the date on which such election is held.
- (3) If any police officer reasonably suspects any person of committing an offence under sub-section (1), he may, if requested so to do by the chairman of the meeting, require that person to declare to him immediately his name and address and, if that person refuses or fails so to declare his name and address or if the police officer reasonably suspects him of giving a false name or address, the police officer may arrest him without warrant."

9. On my anxious and careful scrutiny of the above provisions it is candidly seen that the Act is a complete and self-contained Code, that under the Act an election can be questioned on the ground contained in section 100 of the Act, that an election petition shall contain a concise statement of the material facts, that the election petition shall

set forth full particulars of any corrupt practice/that the petitioner alleged that the pleadings are regulated by section 83 of the Act and it makes obligatory on the election petitioner to give the requisite facts, details and the particulars of such corrupt practice with full statement with exactness as possible and that the provisions of section 83 of the Act are mandatory. It is also seen that if the material facts constituting cause of action or corrupt practices are not averred, then no ground is made out for challenging the election petition and the election petition can be rejected outright. It is therefore necessary to ascertain the settled position of law with regard to material facts and particulars. It will be dealt with at the appropriate stage.

10. The present election petition is based on corrupt practices committed by the candidate, the election agent, the agents other than his election agent and the election workers. A minute perusal of the affidavit presumably filed under provisions to section 83 by the petitioner will undoubtedly confirm this position. Therefore, it is necessary at this stage to ascertain as to how corrupt practices have been committed.

11. From a plain reading of the provisions of section 104(b) of the Act, it is crystal clear that if the corrupt practices are committed by a returned candidate or an election agent, the election is void without any further condition being fulfilled, that if the corrupt practice is committed by any person other than the candidate or his election agent, it must be shown that it was committed by him with the consent of the candidate or his election agent. As can be seen under section 1(1)(d)(ii), if the corrupt practice is committed in the interest of the returned candidate by any person other than his election agent, it is necessary to show further that the result of the election, in so far as it concerns the returned candidate, has been materially affected. Point is, who are the agents. In view of the provision's under sub-section (2) of section 99 of the act and the definition of the expression 'agent' given under the explanation to section 123, the word 'agent', for the purpose of corrupt practices includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate. So far as the election agent and the polling agent are concerned, their appointments are provided by sections 40 and 46 of the Act respectively. In respect of any other person they cannot be taken as agents unless they are held to have acted as agents with the consent of the candidate only in connection with the election.

Having settled on the above point, I now proceed to discuss the accepted principle of law with regard to the material facts and particulars. On this point, the learned counsel for the respondent No. 1 has drawn by my attention to a number of decisions made by the Apex Court. However, I do not propose to burden my judgment with these citations. I will simply discuss some of those important decisions hereunder.

(11) In the case of *Samant v. George Fernandez*, AIR 1969 SC 1201 it was tersely held that the material facts are those facts necessary to formulate cause of action and that omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. In the same case, it was also held that merely repeating the words of statute does not amount to a proper statement of facts and particulars of corrupt practices, i.e., a petition which merely cites section cannot be said to disclose a cause of action.

12. In the case *Manubhai Nandalal Amarsey v. Popatlal Manilal Joshi* (1969) 3 SCR 217, it was also held that material facts are those facts which if established would give the petitioner the relief asked for and that the test required to be answered is whether the Court can give a direct verdict in favour of the election petitioner on the basis of the facts pleaded in the petition in case the returned candidate has not appeared to oppose the election petition. The same principle will find place in *Udhov Singh V. Madhav Rao*, AIR 1976 SC 744. In the said case it was also held that particulars are the details of the case set up by the parties and that particulars within the contemplation of clause (b) of section 83(1) are all details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (b) of section 83(1). Further in the case of *Azhar Hussain v. Rajiv Gandhi*, AIR 1986 SC 1253 it was held that with regard to the consent of the returned candidate or his election agent, there must be averment in the petition facts showing that it was with the consent of the returned candidate or his election

agents, i.e., facts showing how it was held that it was with the consent of the returned candidate or his election agent must be pleaded, for example, when the returned candidate gave consent, how and in what manner consent was given and when and in whose presence the consent was given. It was also held that the names of the agents and workers, time, dates and place should be stated in the petition and that the allegation should not be vague.

13. The ratios of the above decisions are that the material facts are those facts necessary to formulate a complete cause of action and that omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad and also that with regard to the consent of the returned candidate or his election agent there must be averment in the petition facts showing that it was with the consent of the returned candidate or his election agent by giving names of the agents and workers, time, date and place when the consent was obtained, without any vagueness.

14. Keeping in view the above settled position of law, I now proceed to examine the relevant paragraphs of the election petition. The election petition contains 27 paragraphs. Paragraphs 1 to 6 are general statements and paragraph Nos. 19 to 27 do not contain any specific allegations. These paragraphs are more sum and substance of the pleadings in paragraphs No. 7 to 18. I now take up paragraphs 7 and 8 for consideration. In these two paragraphs, it is alleged that soon after the declaration of the Election Commission, widespread arson, looting, use of government machineries even murders and prosecution of different kinds took place in Tripura including the constituency of the petitioner perpetrated by Congress (I) workers with the consent and direct participation of either by the respondent No. 1 or his election agent, as a result of which the election of respondent No. 1 was materially affected and that many workers of the CPI(M) had to flee from their houses because of the terror created by the workers of the Congress (I) with the consent of the respondent No. 1 and his election agent. It is also alleged that the petitioner, his election agent, Secretary of the Tripura State Committee of the CPI(M) of the petitioner's constituency and many other leaders/workers of the CPI(M) lodged hundreds of complaints of the vendetta caused by the Congress (I) workers with the help of the State Machinery, particularly with the Election Commission of India, Returning Officer of the Constituency and also with the Assistant Returning Officers but with no tangible result. Thus, the allegations made in these two paragraphs are utterly vague and lacking in material facts. The names of the Congress (I) workers who allegedly resorted to criminal activities are not mentioned in these paragraphs, it is also not averred in the petition as to where, when and how the respondent No. 1 gave his consent in respect of such criminal activities as alleged. It has also not been averred in the petition as to when, where and in which incident respondent No. 1 or his election agent directly took part in such criminal activities. Therefore, the pleadings are so vague that the same have left a wide scope to the petitioner to adduce evidence in respect of any occurrence at any place on any date he finds convenient or for which he can procure witnesses. In the case of *Nihal Singh v. Rao Virendra Singh*, 1970(3) SCC 239, it was held that if the pleading is so vague and is wanting essential particulars, no evidence should be permitted by the Court on this point. Hence, in view of the above decision made by the Apex Court, I take it that it will not be proper to allow the petitioner to lead evidence on the above points. Further, in paragraph 8, there is no averment that the alleged Congress (I) workers acted with the consent of the respondent No. 1 or his election agent. Therefore, it is my irresistible conclusion that the allegations made in these paragraphs do not at all disclose any cause of action and/or corrupt practice within the meaning of section 100 read with Section 123 of the said Act. Hence the paragraph 7 and 8 are to be struck out on the grounds as stated above.

15. In paragraph 9, it is alleged that the respondent No. 1 and his election agent and other agents of the respondent No. 1 with his consent procured and obtained the assistance of the government officials and Minister for furtherance of the prospect of election of the respondent No. 1 violating the provision of section 123(7) of the "Act". The particulars of such illegal acts are given in sub-paragraph (a) to (d). In

sub-paragraph (a) it is alleged that one Arun Chandra Biswas, a teacher of Primary Section of Baikhora XII Class School was appointed Presiding Officer of the polling Booth No. 39/1. The said Arun Chandra Biswas was for a long time campaigning, in favour of Congress (I) party by organising and addressing group meeting, street corner meeting and mats meeting requesting the voters to vote for the Congress (I) candidate. As influenced by him, the Tripura Government Employees' Federation directly requested its members to work for Congress (I) candidate and made statement in news papers and issued leaflets to that effect. It is further alleged that the said Arun Chandra Biswas addressed an election meeting of the Congress (I) at Baikhora Bazar at 7 P.M. and also a meeting of the Congress (I) Women Organisation requesting the voters to cast their votes in favour of the Congress (I) candidate. It is also alleged that the said Shri Biswas addressed an election meeting held on 13-11-89 at the house of Sri Ranjit Seal at East Charakbai requesting the voters to cast their votes for Congress (I) candidates including the respondent No. 1, it is also alleged that CPI(M), Jolabari Local Committee lodged a complaint with the District Election Officer, South Tripura, Udaipur with copies endorsed to the Assistant Returning Officer, Chief Election Officer etc. (Annexure-A series) stating all the above facts, it is also alleged that from the leaflets issued for and on behalf of all Tripura Employees' Federation, it would be seen that it has been signed by Sri Nepal Krishna Sen Choudhury and Sishirendra Saha, it is pleaded that the aforesaid acts were done by those Government employees with the consent of the respondent No. 1 and his election agent thereby materially affecting the election of the respondent No. 1.

16. The question now arises for consideration is whether a teacher of the Primary Section of Class XII School is a person in the service of the Government within the meaning of Section 123(7) of the Act. Under Section 123(7) the obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person (with the consent of a candidate or his agent any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government as may be prescribed shall be deemed to be corrupt practice for the purpose of this Act. However, in this paragraph, namely paragraph No. 9 there is no averment as to whether the said Arun Chandra Biswas belongs to that class of person. Further proviso to section 123(7) states as follows :

"Provided that where any person, in any service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangement or provides any facilities or does any other act or thing, for to, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his election agent".

However, in this paragraph there is no averment that the said Arun Chandra Biswas while discharging or purporting to discharge of his official duty makes any arrangements or provides any facilities or does any other act or thing, for to, or in relation to the respondent No. 1 or his agent or any other person acting with the consent of the respondent No. 1 or his election agent. In other words, there is no averment to the effect that the said Arun Chandra Biswas acted the aforesaid acts in the discharge or purported discharge of his official duty and that he performed the alleged acts with the consent of the respondent No. 1 or his election agent. Undoubtedly, in the last part of paragraph 9(a), it is averred that Shri Nepal Krishna Choudhury openly propagated for voting in favour of the Congress (I) candidates including the respondent No. 1 with the consent of the respondent No. 1 and his election agent, thereby materially affecting the election of the respondent No. 1. However, there is no averment as to in what manner or in what way and when the respondent No. 1 obtained or procured the services of the said two persons.

17. In the case of *Azhar Hussain V. Rajiv Gandhi*, AIR 1986 SC 1253, it was held as follows :—

"The most important test which remained unsatisfied is as regards the omission to satisfy in what manner

the assistance was obtained and procured by the election candidate for promoting the prospects of his election. In that has been stated is :-

and services were procured and obtained by the respondent, his election agent and other persons with the consent of the respondent with a view to assist the candidature of the prospects of respondent election.....

It is not mentioned as to who procured or obtained the services of Shri BGS, in what manner he obtained the services and what were the facts which went to show that it was with the consent of the respondent. Unless these essential facts which would clothe the petition with a cause of action and which will call for an answer from the returned candidate are pleaded as per the law laid down in *Madanlal Malhotra v. Madhavji* (AIR 1959 S.C. 134) it cannot be said that the petition discloses a cause of action in regard to this charge."

18. In the case in hand, as discussed above, there is no allegation as to in what manner the assistance of Shri Chandara Biswas was procured by the respondent No. 1 for promoting the prospects of his election. There is no material fact from which an inference to that effect can be drawn. There is no mention in this paragraph as to who procured or obtained the services of Shri Chandara Biswas, in what manner he obtained the services and what was the fact which went to show that it was with the consent of the respondent. In the absence of these material facts and particulars, the Court cannot render a verdict in favour of the election petitioner in case the returned candidate has not appeared to oppose the election petition. Hence, it is my irresistible conclusion that sub-paragraph (a) of paragraph-9 does not disclose any cause of action.

19. In sub-paragraph (b) of the same paragraph, it is alleged that *Samak Samad* a daily newspaper of Agartala dated 5-11-89 to the effect that 'All Tripura Employees Federation' in the meeting held on 5-11-89 decided to take part in the election campaign in favour of Congress(I) candidate and that the said meeting was addressed by Sri Sudhir Ranjan Majumder, the Chief Minister of Tripura who was a President of Congress(I) Committee. Sri U. B. Sana, learned counsel for the petitioner has submitted that Sri Sudhir Ranjan Majumder being a President of the Congress(I) Committee must be taken as an agent of the respondent No. 1. In support of his above contention he has cited a number of decisions made by several High Courts including the decision made by this Court in the case reported in GLR page 470. I do not however propose to burden my judgment with those citations for the simple reason that Shri Sudhir Ranjan Majumder was no longer a President of the Congress(I) Committee during the relevant period. That apart, the said news item simply states the Chief Minister gave a short speech. The name of the Chief Minister is not mentioned therein. The contents of the news item do not speak of the exact words uttered by the Chief Minister. Further there is no averment in the petition that Sri Sudhir Ranjan Majumder made the said speech with the consent of the respondent No. 1. Thus the nexus between Sri Sudhir Ranjan Majumder and the respondent No. 1 in regard to the speech made by the former has not been stated in the petition showing the material facts and particulars which will constitute the cause of action and/or corrupt practice under section 123 of the Act.

20. In Sub-paragraph (c) it is alleged that Sri Kalidas Dutta issued a direction to the Deputy Director, Animal Husbandry, North Tripura District to hand over some money to one Asutosh Dutta for disbursement among the beneficiaries of his constituency with a list of beneficiaries and that most of the beneficiaries in the list (which was given along with the written instructions of the minister) are all voters of Dharmanagar assembly segments of

2-Tripura East (S.C.) Parliamentary Constituency. But there is absolutely no averment in the petition that the beneficiaries were all Congress(I) voters or supporters. Therefore, I fail to understand as to how and in what manner the aforesaid illegal activities of the Congress(I) workers were connected with the process of the election. It is also alleged in sub-paragraph (d) that one Amjad Ali, Panchayat Secretary of Hiracherra Gaon Panchayat issued a notice on 31-10-89 asking the people to attend the election meeting on 3-11-89 at 3 P.M. convened by Youth Congress(I) at Hiracherra in favour of respondent No. 1 and that the said Amjad Ali was one of the polling officers of the election in question. It is also alleged that all these illegalities were resorted to for the prospect of the election of respondent No. 1 with the consent of respondent No. 1 and his election agent in violation of the provision or section 123 clause (7) of the Act. However, in these two paragraphs there is absolutely no averment as to how, in what way, when and where the said Kalidas Dutta and Amjad Ali obtained the consent of respondent No. 1 and his election agent. As stated above, as per the laws laid down in *Azhar Hussain V. Rajiv Gandhi*, AIR 1986 SC. 1253, there must be averments in the petition the facts showing that it was with the consent of the returned candidate or his election agent by giving names of the agent or workers, time, date and how the consent was obtained without any vagueness. There is, therefore, no doubt that the facts showing that it was with the consent of the respondent No. 1 or his election agent are not stated in the petition. Thus, the essential facts which would clothe the petition with a cause of action and which will call for an answer from the returned candidate are not stated as per the law laid down in the cases mentioned above (AIR 1986 SC 1253). Hence, I have been persuaded irresistibly to hold that the allegation in sub-paragraphs C&D of paragraph 9 do not disclose any cause of action and hence this paragraph is liable to be struck out.

21. In paragraph 10 of the petition, it is alleged that after the election by the Election Commission of India, the election workers of the petitioner were harassed and assaulted so as to refrain them from taking part in the election campaign. It is also alleged that the election offices of the petitioner and the offices of the CPI(M) at different places of the petitioner's constituency were ransacked, looted and gutted to fire and that these illegal activities were resorted to by the Congress(I) workers with the consent of the respondent No. 1 and his election agent, thereby materially affecting the result of the election of the respondent No. 1 inasmuch as undue influence was done by infringing the provision of section 123(2) of the Act. Few facts and particulars of the aforesaid illegal activities of the respondent No. 1, his election agent and other agents are enumerated in sub-para (a) to sub-para (z-3).

22. For the sake of convenience, the alleged illegal acts committed by the respondent No. 1, his election agent, other agents and election workers may be divided into three parts. The first part consists of sub-paragraphs (a) to (u), (L) to (o) and (p) to (z-3). The second part consists of sub-paragraph (v) and the 3rd part consists of sub-paragraphs (w), (j) and (k).

23. The allegations of the petitioner in the first part are of the same nature. The allegations of the petitioner in these sub-para are that on 14-11-88, the CPI(M) office at Chelendia Bazar was ransacked by the Congress(I) workers. On 6-11-88 at about midnight, some Congress(I) workers with a gang of criminals entered into CPI(M) office at Monohat and damaged the party office. The wall writings in different parts of the constituency of the petitioner were wiped out by the Congress(I) workers. On 7-11-89 one Congress(I) worker namely Monmohan Sinha holding do in his hand threatened the CPI(M) workers several times. On 2-11-89 some Congress(I) workers namely Sishir Roy, Santosh Nath, Sibonanda Das etc., who are all Congress(I) workers, effected the wall writing in favour of the petitioner. On 8-11-89 at about 9.30 a.m. the so-called Chairman of the Committee of the Congress(I) outfit of Fetikriy Krishnanagar, Rudhanagar and Rajgandhi along with some Congress(I) workers holding deadly weapon in their hands ransacked the local committee office of the CPI(M) at Katikhra and damaged the documents. On 11-11-89 at about 11 a.m. to 5 P.M.

A group of Congress(I) workers led by Sri Ashutosh Das removed the election posters of the petitioner from different places. On 12-11-89 and 20-11-89 some Congress(I) workers attacked the CPI(M) workers and supporters and as a result of which the CPI(M) workers and their sympathisers could not cast their votes at the election held on 22-11-89. They were not allowed to vote as controlled by Section 22 of the Act. On 12-11-89, two CPI(M) workers namely Subash Das and Pradip Das were kidnapped by the Congress(I) workers including Sri Narayan Saha. On 13-11-89, some of the Congress(I) workers led by Mahadev Bikash Saha and Pradip Das assaulted CPI(M) worker namely Mahadev Das with iron rod etc. and they took away the signboards, pamphlets, posters etc. from the CPI(M) Bhadrak office. On 14-11-89 at about 11.15 p.m. some Congress(I) workers including about 10 to 12 persons holding deadly weapons in their hands came to Mayapahada and removed the posters of the petitioner from the CPI(M) office. Due to the above said illegal activities of the Congress(I) workers, the CPI(M) supporters could not go to the polling booth to cast their votes on the date of poll, i.e. 22-11-89. On 17-11-89 at about 10 a.m. one Ranjit Debbarma removed and tore off the campaign posters of the petitioner near the house of Bina Devi and when Bina Devi protested, he was severely assaulted. On 10-11-89 some Congress(I) workers including Prabhat Goswami Bikash Ranikui, Usha Ranjan Das etc. assaulted CPI(M) worker in front of Cinema Hall of Sambassa. On 9-11-89 some Congress(I) workers namely Mahadev Chakraborty, Praap Chakraborty, Narayan Dev Naha etc. took away the vehicle used by the CPI(M) workers along with a bag containing Rs. 4,000. On 13-11-89 at about 3 p.m. some Congress(I) workers assaulted CPI(M) workers namely Sri Phaniul Dutta and Sri Sarbadhar while they were distributing voter slips. On 16-11-89 at about 9.30 p.m. Sri Tapan Chakraborty, an election agent of the petitioner was severely beaten up by the Congress(I) workers. On 23-11-89 some Congress(I) workers, namely, Taktir Ahmed and Mohoranjana Debnath asked one Smt. Bijaya not to cast her vote in favour of CPI(M) candidate on pain of death. On 18-11-89 Sri Ashutosh Das, Congress(I) leader along with 25 others assaulted Sri Tripathi Nath, a polling agent of the petitioner and they caused bodily injury to Jogesh Chandra Nath when he tried to save Tripathi Nath. On 20-11-89 some Congress(I) workers created large scale terrorising activities in Barniars Sub-division so that voters should not cast their votes. On 6-11-89 at about 3 p.m. some Congress(I) workers numbering about 40/50 persons holding deadly weapons in their hands attacked a number of CPI(M) supporters who are then assembled at Sonabil Bazar for holding an election meeting. On 17-11-89, some Congress(I) workers led by Sri Ashutosh Das asked Sri Bhola Halong not to work for the CPI(M). It is also alleged that various written complaints were lodged by the petitioner, his Election agent and the CPI(M) workers with the Officers-in-Charge of the concerned Police Stations and also with the Returning and Assistant Returning officers on various dates in connection with the above illegal activities of the Congress(I) leaders and the workers. It is to be noted here that in these sub-paragraphs, there is absolutely no averment that the said Congress(I) leaders and workers had committed the aforesaid illegal acts with the knowledge and consent of the respondent No. 1 or his Election Agent.

24. As was discussed in the above, if the corrupt practice is committed by any person other than the candidate or his election agent or Polling agent, it must be shown that it was committed by him with the consent of the candidate or his election agent. If the corrupt practice is committed in the interest of the returned candidate by any person other than his election agent and polling agent. It is necessary to show further that the result of the election in so far as it concerns, the returned candidate has been materially affected. Again, as stated above, if the corrupt practice is committed with the consent of the returned candidate or his election agent, there must be averments in the petition, facts showing that it was with the consent of the candidate or his election agent that is, facts showing how it was held that it was with the consent of the returned candidate or his election agent must be pleaded for example, when the returned candidate gave consent, how and in what manner, when and in whose presence consent was given

and that the names of the agents and workers, the time, date and places when they obtained or procured the consent of the returned candidate or his election agent should be stated and also that the allegations should not be vague. Sri O. B. Saha, learned counsel for the election petitioner has vehemently submitted that the election petition must be read as a whole and that the petitioner has made an averment in the beginning of paragraph 10 that the aforesaid illegal acts were committed by the agents of the respondent No. 1 with the consent of the respondent No. 1 and his election agent. In support of his above contention the learned counsel has cited a number of decisions made by the Apex Court and several High Courts. Here again, I do not propose to burden my judgment with those citations because, even if the contention of the learned counsel is accepted, it will not help the case of the petitioner in any manner inasmuch as there is absolutely no averment in the petition regarding the time, dates, places where the alleged agents or workers of the respondent No. 1 obtained the consent of the respondent No. 1 and his election agent without any vagueness. In other words, the facts and particulars showing that the aforesaid illegal acts were done by these persons with the consent of the Respondent No. 1 or his election agent have not been stated in the petition. There is thus a glaring omission to mention the facts and particulars which will constitute the cause of action and/or corrupt practice under Section 123 of the Act. Further, there is no averment in the election petition as to how and in what manner the result of the election so far as the respondent No. 1 is concerned, was materially affected. Thus, the allegations made in these sub-paragraphs (Part-I) are utterly vague and lacking in material fact. In other words, the pleadings are so vague that the same have left a wide scope to the petitioner to adduce evidence in respect of any occurrence at any place or any date he finds convenient for which he can procure witnessess. Therefore, the petitioner must not be allowed to lead evidence on the above points as per the law laid down in the said case of Nihal Singh V. Rao Birendra Singh (1970) 3 SCC 239 and Azhar Hussain v. Rajiv Gandhi AIR 1986 SC 1253. It follows that the allegations made in these sub-paragraphs do not at all constitute any cause of action and/or corrupt practice within the meaning of Section 123 of the Act.

25. Having settled on the above point, I again take up the second part, i.e. sub-paragraph (p) for consideration. In this sub-paragraph, the allegations of the petitioner are that on 21-11-89 at 1 p.m. in a meeting held at Purba Padmabil Junior Basic School, Sri Ashutosh Das was propagating to vote for the respondent No. 1 during the Prohibited period with the consent of the respondent No. 1 and his election agent Sri Birjit Sinha in violation of Section 126 of the Act and that on the same day, the Secretary CPI(M) lodged a written complaint (Annexure-Y) with the Assistant Returning Officer with a copy endorsed to the Returning Officer. However, there is absolutely no averment in this sub-paragraph as to how, in what manner, on what date and at what place or places the said Ashutosh Das procured or obtained the consent of the respondent No. 1 and his election agent Sri Birjit Sinha for holding such a meeting and also for propagating to cast vote in favour of the respondent No. 1. Therefore, for the reasons stated above, these paragraph do not disclose any cause of action and/or corrupt practice within the meaning of section 123 of the said Act.

26. Having settled on this point also, I again proceed to consider the third part, i.e. paragraphs (i), (j) and (k). The allegations of the petitioner in paragraph (i) is that Sri Birjit Sinha, the election agent of the respondent No. 1 and a Cabinet Minister with some anti-social elements attacked the villagers of Jagannathpur within Fatikroy Assembly segment of the Constituency of the petitioner and set fire to the houses of the CPI(M) workers and sympathisers and as result of which the workers and supporters of the CPI(M) had to leave their houses. It is stated that the election agent of the petitioner Sri Tapan Chakraborty after collecting informations regarding the incidents from the aforesaid villagers, lodged a written complaint dated 14-11-89 (Annexure-P) with the Returning Officer. It was also alleged that on 13-11-89 Sri Upendra Sabdakar, Smt. Ranibala Sabdakar and Smt. Kamla Sabdakar

lodged separate written complaints with the Kailashahar Police Station for the said occurrence. On perusal of the separate written complaint petitions (Annexure-Q) and on perusal of the Annexure-P, it is seen that the affected persons were Sri Upendra Sahdakar Smt. Rainbala Sahdakar and some others. Again on perusal of the three written complaints (Annexure-Q) lodged by the said affected persons with the Officer-in-Charge, Kailashahar Police Station, it is seen that there is no allegation in those petitions that the said Birjit Sinha instigated the Congress(I) workers for committing the illegal acts complained of. They did not even mention the name of Birjit Sinha in the first information report. That apart, in this sub-paragraph, there is no averment as to on what dates and time, the said Birjit Sinha and Congress(I) workers committed the alleged illegal acts. Further, it has not been averred in the petition as to how the alleged illegal acts committed by the said Birjit Sinha and Congress(I) workers were connected with the process of election. There is no averment as to why and for what purpose the alleged illegal acts were committed by Birjit Sinha and Congress(I) workers. If the alleged acts were committed by them to intimidate the electors, material facts and particulars how the alleged acts had intimidated the electors are to be averred in the petition. The mere statement that criminal acts were committed to intimidate electors will not be sufficient. The allegations, therefore, cannot be construed as one disclosing cause of action. Hence I take it that these allegations in this sub-paragraph do not disclose any cause of action.

27. In sub-paragraph (i), the allegation of the petitioner is that on 13-11-89 Sri Birjit Sinha, the election agent of the respondent No. 1 and some Congress(I) workers completely destroyed Manuhat C.P.I.(M) of officer along the election papers, furnitures etc. which were kept in that office. It is also alleged that on the same day at 8 P.M. the shop of Sri Sukhamoy Dutta, a C.P.I. (M) worker was looted by the said Birjit Sinha and Congress(I) workers. It is also alleged that on the same day at about 9 P.M., the workers led by Sri Birjit Sinha attacked the house of Narendra Malakar, a C.P.I. (M) worker of Sonair and looted all the properties. It is stated that the election agent of the petitioner drew the attention of the police in this behalf but no tangible action was taken by the police and therefore, the election agent of the petitioner lodged a written complaint with the Returning officer of his Constituency on 14-11-89. Now from the above allegations, it will be seen that in this sub-paragraph there is absolutely no averment that the affected persons are electors and that the aforesaid illegal acts were committed by the said Birjit Sinha and the Congress(I) workers in connection with the election. In other words, there is no averment in the petition as to how and in what manner alleged illegal acts said to have been committed by Birjit Sinha and Congress(I) workers were connected with the process of the election. Therefore, in this sub-paragraph the material facts and particulars to make a complete cause of action are lacking.

28. In sub-paragraph (k), it is alleged that on 19-11-89 Sri Birjit Sinha, the election agent of the respondent No. 1 declared in a mass meeting at Kailashahar that no CPI(M) supporters and voters would be allowed to cast vote and that by making such speeches at different places of the constituency of the petitioner Sri Birjit Sinha had created serious provocation. It is stated that the election agent of the petitioner Sri Tarun Chakraborty sent a telegram on 28th November, 1989 i.e. 6 (six) days after the date of polling making the allegation to the Chief Electoral Officer, Tripura about this matter (Annexure-5). However, there is absolutely no averment as to what place of Kailashahar and at what time, the meeting was held. Again, there is no averment in this sub-paragraph as to what place and time etc. Birjit Sinha made the said provocative speeches. It has also not been averred the exact words used by Birjit Sinha at those places. It is also alleged that on 19th November, 1989 Sri Subodh Das, a CPI(M) M.L.A. was attacked by the Congress(I) workers while he was addressing a meeting at Rajnagar in Dharmanagar Sub-division and that the election agent of the petitioner sent a telegram to the Chief Electoral Officer in connection with the said matter. However, there is no averment as to the particulars of those Congress(I) workers

who attacked Sri Subodh Das. There is also no averment as to what place and time the meeting was held. Thus, the proposed pleading in this paragraph does not set out the material facts and therefore, constitute an incomplete cause of action under section 123(7) of the Act. Hence, the entire paragraph 10 is to be struck out on the grounds as stated above.

29. In para 11 the allegations of the petitioner are that on 22nd November, 1989 most of the polling agents of the petitioner were prevented from entering into their respective polling booths by Congress(I) workers and goondas. Some of the Polling agents were kidnapped by Congress(I) workers and, as such, they could not enter into their respective polling booths. Some of the polling agents were driven out from their polling booths and beaten up by the Congress(I) workers. The Presiding Officer could not discharge their duties enjoined by the law. In many areas of the petitioner's constituency voters could not cast votes as they were threatened and intimidated by the Congress(I) workers. Some instances of ousting of the polling agents of the petitioner from the booths are described in sub-paragraphs (a) to (n).

30. The allegations in sub-paragraphs (a) and (b) are almost of the same nature. The allegations in those sub-paragraphs are that Biswanath Singh, the polling agent of the petitioner was driven out from his polling booth and assaulted him by Congress(I) workers and thereafter the Congress(I) workers, namely, Mrinal Kanti Singh, Mahir Chandra Paul, Harimohan Singh, Sajal Kanti Singh etc. cast false votes. In Radhanagar polling booth which was traditionally a CPI(M) (Marxist) stronghold, CPI(M) (Marxist) candidate got only 2 votes and Congress(I) got 725 votes. The 3 polling agents of the petitioner, namely, (i) Nakul Saha, (ii) Sandendra Kumar and (iii) Bipul Singh addressed two applications (Annexure-Z-13) to the Presiding Officer intimating that they were withdrawing from their respective polling booths. It is to be noted here that there is absolutely no averment in those sub-paragraphs as to the persons who assaulted and drove them out from the polling booths. Again, there is no allegation that these persons committed the said illegal acts with the consent of the respondent No. 1 and his election agent and also that the same had materially affected the election of the respondent No. 1. That apart, in Annexures-Z-13, it is stated that due to insecurity inside the polling station they have been decided to withdraw their polling agents. It shows that they were not the real polling agents and that the polling agents were some other persons.

31. The allegations in sub-paragraphs (d) to (i) and (k) to (n) are almost of the same nature. The allegations in these sub-paragraphs are that Aruj Ali and Moshaid Ali the two polling agents of the petitioner in respect of polling booth No. 16 were attacked and prevented them from entering into the polling booths by some Congress(I) workers, namely, Mansud Ali, Gurman Ali etc. holding deadly weapon in their hands. Some Congress(I) workers and goondas raided the house of the voters and asked them not to cast their votes in favour of the petitioner and as a result of which the voters could not cast their votes. The said two polling agents submitted a written application to the Presiding Officer (Annexure Z-14). Another two polling agents of the petitioner, namely, Haradhan Banik and Parash Paul were driven out from their polling booth by Congress(I) workers, namely, Nepal Baidya, Hiralal Dutta etc. Another polling agent of the petitioner namely, Parimal Dev was driven out from the polling booth by the Presiding Officer when he complained the Congress(I) workers intimidated the CPI(M) voters. The Polling agents of the petitioner in respect of polling booth Nos. 1/41, 1A/41, 6A/41 and some others of Sabroom Assembly segment were driven out by Congress(I) workers and thereafter they captured the polling booths. Shri Mashaid Ali, the polling agent of the petitioner in respect of polling station No. 16 was assaulted by some Congress(I) workers. The polling booths lying within the Jolaibari Assembly segment were raided and captured by Congress(I) workers and goondas. The Polling agent of the petitioner in respect of polling booth Nos 12/39, 15/39, 25/39 were assaulted and driven out from their respective polling booths. The two polling agents of the petitioner in respect of the polling booth No. 11/38 could not enter into their polling booth due to the obstruction made by the Congress(I) workers. Shri Chandni Prasanna Dey, the polling agent of the petitioner was assaulted by Congress(I) workers. It is also stated that all the incidents of terrorising the



voters, preventing the voters from casting votes, preventing the polling agent of the petitioner from entering into the polling booths and ousting of the polling agents of the petitioner from the polling booths were done by the Congress(I) workers and goondas with the consent of the respondent No. 1 and his election agent, which materially affected the election of the respondent No. 1. However, there is absolutely no averment as to how and in what manner the said Congress(I) workers and goondas procured or obtained the consent of the respondent No. 1 and his election agent. There is also no averment as to how, when, in what manner and through whom the Congress(I) workers procured the consent of the respondent No. 1 and his election agent. Thus, the averments made in the petition do not show how the aforesaid illegal acts had been committed by the said persons with the consent of the returned candidate or his election agent. In other words, the material facts which are necessary to show that the said persons committed the aforesaid illegal acts with the consent of the Respondent No. 1 or his agent, have not been mentioned or stated in this petition. There is therefore, no doubt that the averments in paragraph 11 do not contain one of the most important facts which would clothe the petition with a cause of action and which would call for an answer from the returned candidate. Unless the nexus between the said persons and the prior consent of the respondent No. 1 or his election agent in regard to the alleged illegal actions is set out in material particulars it cannot be said that the petition disclosed a cause of action as per the law laid down in *Manubhai Nandlal Amersew V. Popatlal Manilal* (AIR 1969 SC 734). After all, the consent is the life line to link up the candidate with the action of other persons which may amount to corrupt practice and therefore if it is not specifically pleaded by setting out material particulars and facts in the petition and proved beyond reasonable doubt, the candidate cannot be charged for the action of the others (AIR 1985 SC 89). In the absence of the material facts and particulars showing that the said person/workers committed the aforesaid illegal acts the Court cannot render a verdict in favour of the election petitioner in case the returned candidate has not appeared to oppose the election petition, and, therefore, the allegations in this paragraph, i.e. paragraph 11 do not disclose any cause of action and/or corrupt practice within the meaning of section 100 read with section 123 of the Act. Hence, the entire paragraph 11 is to be struck off.

32. In paragraph 12 the allegations of the petitioner are that many voters who were willing and eager to cast vote in a large number of polling booths in the petitioner's constituency were either prevented from entering into the polling area or were driven out from the polling area by the Congress (I) workers by show of criminal force either with the consent of the respondent No. 1 or his election agent and that these incidents materially affected the result of the election in so far as it concerns the respondent No. 1. Few incidents are enumerated in sub-paragraphs (a) to (k). The allegations in all the sub-paragraphs except sub-paragraphs (b) and (c) are almost of the same nature. In sub-paragraph No. (a) it is alleged that Late Kshirai Deb Barma, C.P.I. (M) workers were killed by some Congress (I) workers, namely Amar Sarkar, Probir Mallik, Manik Ghose etc. on 22-11-89 at about 10.30 A.M. On getting the news of the killing of Kshirai Deb Barma, the voters got frightened and did not turn back to cast votes. It is to be noted here that there is no averment in this sub-paragraph that the alleged criminal acts were committed by the said Congress (I) workers with the consent of the respondent No. 1 or his election agent and that the said illegal acts materially affected the result of the election in so far as it concerns the respondent No. 1. In sub-paragraph No. (d) it is alleged that many voters were either assaulted or prevented by the Congress (I) workers and as such some of the voters lodged separate reports with the concerned Officers-in-Charge of the Police Stations. In this paragraph there is no mention about the names of those Congress (I) workers and the place where the voters were either assaulted or prevented from voting. In sub-paragraph (e) it is also alleged that some Congress (I) workers, namely Pradip Sarkar, Sathan Biswas and some other 10 to 12 persons armed with Ram Das, Muzzle loaded gun etc. created reign of terror and prevented voters from entering into the polling booths located at Pachim Filak High School, Madhya Pilak Colony Senior Basic School and Ramraibari Senior Basic School and as a result of which, the C.P.I. (M) supporters could not cast their votes. Here again, there is absolutely no averment in

this sub-paragraph that the said Congress (I) workers committed the said illegal acts with the consent of the respondent No. 1 or his election agent and that the said illegal acts committed by those Congress (I) workers materially affected the result of the election in so far as it concerns the respondent No. 1. In sub-paragraph (f) it is alleged that Sri Chalou Mog, a C.P.I. (M) supporter was assaulted by Congress (I) workers including Tarini Das, Ugrajoy Mog etc. when he was waiting in the queue for casting his vote and that as a result of which, he could not cast his vote. In sub-paragraph (g) it is also alleged that many voters who were to vote in favour of the petitioner in many polling stations could not cast their votes because of the assault, threats and reign of terror made by Congress (I) workers, namely Dilip Sarkar, Bhupal Majumdar Milan Paul etc. In sub-paragraph (h) it is also alleged that on 22-11-89 many voters who were to cast their votes in favour of the petitioner in polling booth Nos. 1, 3, 4, 5, 19, 20, 21 and 25 could not cast their votes as they were either driven out from the polling booths or prevented from entering into the polling booths and therefore the polling agents or the petitioner submitted a report to the Assistant Returning Officer, Delonia. In sub-paragraph (i) it is also alleged that Sri Milan Sarkar, a voter was assaulted seriously by Congress (I) workers including Dilip Sarkar, Uddhav Dutta. In sub-paragraph (j) it is also alleged that on 22-11-89 two activists of C.P.I. (M) namely Surendra Chandra Debnath and Rashmoy Nath were obstructed and assaulted by the Congress (I) workers. In sub-paragraph (h) it is stated that the petitioner himself sent a letter to the Assistant Returning Officer alleging, inter alia, that a number of polling booths of his constituency were captured by the Congress (I) goondas. However, it has not been averred in this paragraph as to how, in what manner and at what time the Congress (I) workers captured the polling booths. It is also stated that all the above criminal acts were committed by the Congress (I) workers in the manner as stated above in violation of the election law and rules with the consent of the respondent No. 1 and his election agent and that in some incidents the respondent No. 1 and his election agent personally took part in the said crimes. However, there is absolutely no averment in this paragraph, the material facts and particulars showing as to how, when, at what place or places and through whom the said Congress (I) workers procured or obtained the consent of respondent No. 1 or his election agent. Therefore, the averments contained in this paragraph do not satisfy the test prescribe in *Azhar Hussain V. Rajiv Gandhi*, AIR 1986 SC 1253 and *Manubhai Nandlal Amersew V. Popatlal Manilal Joshi*, AIR 1968 SC 734. Hence the pleadings in these sub-paragraphs do not set out the material facts which will constitute the cause of action under section 123 of the Act.

33. In sub-paragraph (b), it is alleged that on 22-11-1989 the votes of the polling booth No. 16/53 namely, Mohamad Ali, Monohor Ali and Kuti Mia were beaten and injured and prevented from casting their votes by Congress (I) workers led by Shri Birjit Sinha, a Minister and Election Agent of the respondent No. 1 and that on the same day the said voters sent a telegram to the Chief Election Commissioner of India. It is also alleged that similar incidents took place at Polling booth Nos. 25/52, 28/53 and that in all cases the Congress (I) workers were led by Shri Birjit Sinha. It is to be noted here that the names of those Congress (I) workers who committed the aforesaid illegal acts are not mentioned in this sub-paragraph. Further, the place or places where the voters were assaulted by the Congress (I) workers are not also stated in this sub-paragraph. Lastly, the time when the voters were assaulted or prevented from casting votes by the Congress (I) workers are not also mentioned. In sub-paragraph (c) it is alleged that on 22-11-1989, the Election Agent of the petitioner Shri Tanan Chakraborty sent letters to the Returning Officer, Assistant Returning Officer, Kailashahar and all different Police Stations making allegations that the polling agents of the petitioner were not allowed to enter into many polling booths by the Congress (I) workers by show of criminal force and that the said Congress (I) workers were led by Sri Birjit Sinha, a Minister and an Election Agent of the Respondent No. 1. Here again, there is no averment in this sub-paragraph as to the names, of the Congress (I) workers and the place or places where the Polling agents of the petitioner were prevented from entering into the Polling booths. Lastly, there is absolutely no averment as to when the polling agents were prevented by the Congress (I) workers led by Sri Birjit Sinha. Thus, the averments



contained in this sub-paragraph do not satisfy the test prescribed in the said cases in *Manubhai Nandlal Amersey V. Popatlal Manilal Joshi*, AIR 1969 SC, 734 and *Azhar Hussain V. Rajiv Gandhi*, AIR 1986 SC 1253. Thus, the pleadings in these paragraphs do not set out the material facts and, therefore, constitute an incomplete cause of action under Section 123 of the Act. Hence, the entire paragraph 12 is liable to be struck out.

34. In paragraph 13 the allegations of the petitioner are that at the time of counting of ballot papers some 14 ballot papers used in Kunjaban Junior Basic School contained three types of signatures of the Presiding Officer. It created some doubts regarding the genuineness of those ballot papers. It is also alleged that in Polling station Nos. 5, 6, 7, 9 and 12 of 29—Teliamura Assembly segment 93% to 98% votes were shown to have been polled and that such unusual high rate of percentage of votes were due to rigging of elections by the Congress (I) workers with the consent of the respondent No. 1 and his election agent. It appears that the said 14 ballot papers the genuineness of which was in doubt, were not counted in favour of respondent No. 1. It has not been averred in the petition that the said ballot papers were counted in favour of respondent No. 1. Besides, the 14 ballot papers will not materially affect the result of the election inasmuch as the margin of votes polled by the petitioner and the respondent No. 1 is too big. Therefore, the allegations and/or statements made in respect of 14 ballot papers do not disclose any cause of action within the meaning of section 100 of the Act. Further the polling of high percentage of votes in those polling booths by itself does not lead to any adverse influence automatically. In other words, from the fact that the polling of high percentage of votes in some booths, an inference cannot be made that the election in question in those booths was rigged. In the case of *Dhartipakar Madan Lal Agarwal V. Rajiv Gandhi*, AIR 1987 SC, 1577 it was tersely held that though Rajiv Gandhi polled 100% vote in some of the polling stations it cannot be automatically concluded herefrom that election in question was rigged. Hence the above pleadings in this paragraph do not set out the material facts and therefore constitute an incomplete cause of action within the meaning of section 100 of the Act and therefore this paragraph is liable to be struck out.

Paragraphs 14 to 18 are of the same nature. In paragraph 14 it is stated that the Congress (I) workers captured several polling booths and that the polling agents of the petitioner were either ousted from the polling booths or were prevented from entering into the polling booths in a very large scale. It is also alleged that the voters were prevented from casting votes by the Congress (I) workers. In paragraph 15 it is also alleged that the C.P.I. (M) leaders and the petitioner himself made various representations to

the Returning Officer, Chief Electoral Officer of the State and also to the Chief Election Officer of India. In paragraph 16 it is also alleged that the Central Observer of the North Tripura District submitted report to the Election Commission of India and the Chief Electoral Officer of the State by signals. In paragraph 17 the petitioner got two votes only in polling booth No. 8 and that in the 1984 Parliamentary Election C.P.I. (M) polled 275 votes. It is also alleged that in some polling booths also the petitioner got very small number of votes. In paragraph 18 it is alleged that in 1984 Election the petitioner was elected by a margin of more than 40,000 votes over the Congress (I) candidate. However, in no where of these paragraphs the petitioner has averred that the said illegal acts were committed by the Congress (I) workers with the consent of respondent No. 1 or his election agent. Therefore, the averments contained in these paragraphs do not satisfy the test prescribed in the cases of *Manubhai Nandlal Amersey V. Popatlal Manilal Joshi*, AIR 1969 SC, 734 and *Azhar Hussain V. Rajiv Gandhi*, AIR 1986 SC, 1253. In these circumstances the pleadings in these paragraphs do not set out the material facts and therefore constitute no cause of action under sections 100/123 of the said Act. After all, the election result in the previous election cannot determine the fate of the present election case as rightly submitted by the learned counsel for respondent No. 1. Hence these paragraphs are liable to be struck out. Point is, after striking out the pleadings in paragraphs 7 to 18 any triable issue remains to be considered.

35. On a careful scrutiny of the statements made by the petitioner in the other paragraphs of the petition it is candidly seen that the same are mere repetition and/or submission on the previous pleadings of the election petition which have already been dealt with in the above paragraph and therefore I need not discuss the same again. Thus, after striking out the pleadings in paragraphs 7 to 18 no triable issues remain to be considered. In view of the law laid down in the said case of *Dhartipakar Madan Lal Agarwal V. Sri Rajiv Gandhi* (AIR 1987 SC, 1577) the election petition filed by the petitioner is to be rejected outright before the filing of the written statement by the respondents and I do order accordingly. The petitioner is to pay Rs. 300 to the contesting respondent (respondent No. 1) as cost.

36. The Registrar, Agartala Bench, shall communicate this order to the concerned authorities in terms of Section 103 of the Act.

Y. I. SINGH, Judge

By Order

[No. 82/TP-HP/3/90]

B. N. CHAWLA, Under Secy.

